

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the  
MOTION  
Foster Care License  
Revocation Appeal of  
Eunice Pierro

RULING ON  
  
IN LIMINE

Pursuant to a Prehearing Order issued on June 29, 1988, the Licensee filed a Motion in limine seeking to exclude the admission of certain testimony and exhibits from the hearing in the above-entitled matter. Carla Kjellberg, Attorney at Law, 767 University Avenue, St. Paul, Minnesota 55401 filed a Motion on behalf of the Licensee, Eunice Pierro. A response to the Motion was filed by John St. Marie, Assistant County Attorney, 2000 Hennepin County Government Center, Minneapolis, Minnesota 55487, on behalf of Hennepin County.

By her Motion, the Licensee seeks to exclude the following evidence from the hearing in this case:

1. Any and all testimony either in verbal or written form reciting statements made by the Witta children;
2. Exhibit 1, a report by Jan Darry dated May 21, 1987;
3. Exhibit 8, a report from Beverly Orr, dated February 24, 1988; and
4. A videotape of interviews of the Witta children.

Based upon all of the records, files and arguments of counsel, the Administrative Law Judge makes the following:

ORDER

The Licensee's Motion is, in all respects, DENIED.

Dated this        day of August, 1988.

PETER C. ERICKSON  
Administrative Law Judge

# MEMORANDUM

Ms. Eunice Pierro has held a foster care license since 1954. At this time, Hennepin County is seeking to revoke her license based upon allegations of neglect of foster children. The County contends that Ms. Pierro allowed unsupervised visitation by the parents of Joseph and Amanda Witta in violation of a juvenile court order limiting access by the parents. Additionally, the County contends that Ms. Pierro allowed her son, Charles, to supervise foster children in violation of her contract with the County. Much of the evidence that the County is proposing to use to support these allegations is contained in the investigative reports of social workers and on a videotape interview with the Witta children. The Licensee contends that this evidence is unreliable hearsay and should not be admitted in this proceeding.

Minn. Stat. sec. 245A.08, subd. 3 (1987 Supp.) reads as follows:

Subd. 3. Burden of proof. (a) At a hearing regarding suspension, immediate suspension, revocation, or making probationary a license for family day care or foster care, the commissioner may demonstrate reasonable cause for action taken by submitting statements, reports, or affidavits to substantiate the allegations that the license holder failed to comply fully with applicable law or rule. If the commissioner demonstrates that reasonable cause existed, the burden of proof in hearings involving suspension, immediate suspension, revocation, or making probationary a family day care or foster care license shifts to the license holder to demonstrate by a preponderance of the evidence that the license holder was in full compliance with those laws or rules that the commissioner alleges the license holder violated, at the time that the commissioner alleges the violations of law or rules occurred.

Obviously, the Legislature has provided that documentary evidence is admissible in a revocation proceeding, at least to support a showing of "reasonable cause" and to shift the burden of proof to the licensee. Additionally, in the case of Matter of Welfare of Brown, 296 N.W.2d 430, 435 (Minn. 1980), the court held that the reports of social workers were admissible in a termination of parental rights proceeding as business records pursuant to Minn. R. Evid. 803(6). Consequently, the Judge will not exclude the reports of social workers from being offered in this proceeding on the grounds of hearsay. What the Judge will have to determine, however, is how much weight to give the information contained in those reports.

The issue of whether or not to receive hearsay statements of children into the record is linked, in part, to the potential damage that might be done in having the children testify in person. This Office, and this Judge, has always attempted to avoid potentially traumatic episodes of live testimony from children. In this case, licensed psychologist Paula Villegas has stated her opinion that live testimony 'would not be in the children's best interest' and that she would 'strongly recommend against the children testifying.0 The Judge will not exclude the videotape of the children's interview based on hearsay

grounds. Being able to watch the children make their statements should enable the Judge to gauge the trustworthiness of those statements and how much weight to assign to their "testimony". The County should be prepared, however, to lay some foundation to show the trustworthiness of statements made by the children which will be testified to by County witnesses. See, Welfare of R.T. and L.T., 364 N.W.2d 884, 886 (Minn. App. 1985); Minn. Rule 1400.7300, subp. 1.

P.C.E.